UBUSHINJACYAHA v MUKESHIMANA

[Rwanda URUKIKO RW'UBUJURIRE – RPAA00053/2019/CA (Karimunda, P.J.) 27 MATA 2020]

Amategeko agenga imiburanishirize y'imanza z'inshinjabyaha – Itangwa ry'ibimenyetso – Kwemera icyaha – Kwemera icyaha ntabwo buri gihe byafatwa nk'ikimenyetso ndakuka cyihagije cyashingirwaho mu kwemeza ko uregwa ahamwa n'icyaha akurikiranweho.

Amategeko agenga imiburanishirize y'imanza z'inshinjabyaha – Ibimenyetso – Ukwemera icyaha kutunganiwe n'ibindi bimenyetso – Ikimenyetso cyo kwemera icyaha iyo kigereranyijwe n'ibindi bimenyetso, nicyo kimenyetso gifite intege nke (preuve fragile) kurusha ibindi – Hari igihe kiba kidakwiye kwemerwa ngo gihabwe agaciro.

Incamake y'ikibazo Urubanza rwatangiriye mu Rukiko rw'Isumbuye rwa Gasabo, Shyaka akurikiranyweho icyaha cyo gusambanya umwana, Urukiko rwfashe umwanzuro rwemeza ko icyaha kimuhama rumuhanisha igifungo cya burundu y'umwihariko.

Shyaka yajuririye Urukiko Rukuru avuga ko Urukiko rw'Isumbuye rwamuhamije icyaha nta perereza rwakoze kandi bushyingira ku buhamya butaribwo, Urukiko rwasanze nta kosa Urukiko rw'Isumbuye rwakoze ryo kudakora iperereza kuko ibimenyetso bimushinja byari bihagije; rwafashe icyemezo cyo kugumishaho imikirize y'Urubanza yo mu Rukiko rwa mbere ariko ku bw'Itegeko ruvanaho burundu y'umwihariko rushyiraho burundu gusa.

Uwarezwe nabwo ntiyishimiye imikirize y'urubanza ajuririra Urukiko rw'Ubujurire ahakana na none icyaha ariko nyuma yo gutanga ikirego yaje gutanga imyanzuro y'inyongera yemera icyaha mu buryo budashidikanywaho anagisabira imbazi asaba ko yagabanyirizwa igihano ndetse ko no kubera yakoze icyaha ari umwana. Ubushinjacyaha buvuga ko umwana wahohotewe yari afite imyaka 11 gusa, akaba asanga ingaruka z'icyaha yakorewe zitazamuvamo, ariko ko kubayaremeye icyaha akagisabira imbabazi yagabanyirizwa igihano agahabwa imyaka 20 y'igifungo ibyo kuvuga ko yagikoze nawe ari umwana bitashyingirwaho kuko Atari ukuri.

Incamake y'icyemezo: 1. Kwemera icyaha ntabwo buri gihe byafatwa nk'ikimenyetso ndakuka cyihagije cyashingirwaho mu kwemeza ko uregwa ahamwa n'icyaha akurikiranweho kuko iyo kigereranyijwe n'ibindi bimenyetso, nicyo kimenyetso gifite intege nke (*preuve fragile*) kurusha ibindi, hakaba hari igihe kiba kidakwiye kwemerwa ngo gihabwe agaciro kuko kiba kidafatika cyane cyane nk'iyo uregwa, utunganiwe, yaburanye ahakana icyaha, hanyuma akaza kucyemera mu buryo budasobanutse cyangwa agatangira acyemera hanyuma akaza kugihakana, ko icyo gihe Ubushinjacyaha aribwo bufite inshingano zo kugaragaza ibindi bimenyetso bushingiraho, bityo kwemera icyaha kwa Mukeshimana ubwabyo ntibyihagije kugirango hemezwe ko ahamwa n'icyaha aregwa akaba yagizwe umwere kuko Ubushinnjacyaha butabashije kugaragaza ibindi bimenyetso.

2. I yo hari ibimenyetso bigaragaza ko umugabo n'umugore basanganwe amakimbirane, umugabo agatongana n'umugore, bwacya umugore akarega umugabo ko yasambanyije umwana uwo mugore yashatse afite, kandi, uretse kwemera icyaha kw'umugabo, uwo mugore akaba ariwe mutangabuhamya wenyine ufatika uri muri dosiye, Urukiko rugomba gusesumana ubushishozi n'ubwitonzi ibimenyetso biri muri dosiye kugirango yaba uvugwa ko yahohotewe ndetse n'ubw'uregwa gukora icyaha, hatagira uburengeniramo, kuba rero Mukeshimana n'umugore we bari basanzwe bafitanye amakimbirane, akaba umugore we ariwe wenyine umushinja gusambanya umwana, kandi haka ntakindi kimenyetso kiri muri dosiye kimushinja, mubushisho bw'Urukiko burasanga ubu buhamya bw'umugore we butafatwaho nk'ukuri ngo rumwemeze icyaha.

Ubujurire bufite ishingiro.
Imikirize y'Urubanza rw'Urukiko Rukuru irahindutse
Amagarama y'urubanza aherereye k'isanduku ya Leta.

Amategeko yashingiweho :

Itegeko **N°** 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshijabyaha, ingingo ya 107 na 111
Itegeko Ngenga 71 N° 01/2012/OL ryo ku wa 02/05/2012 rishyiraho Igitabo cy'amategeko ahana ingimgo ya 71 na 78

Imanza zifashishijwe.
Urubanza nimero RPAA 0066/15/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 04/01/2019, kuva ku gika cya 30 kugeza ku cya 33.
Urubanza no RPA 0229/10/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 19/09/2014.
Urubanza no RPA 0042/14/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 02/06/2017.
State v Bengu 1965 (1) SA 28 (N).
State v Njoli and Another 1981 (3) SA 1233 (a) at 1237 G
Regina v Blyth 1940 AD 355 at 364.

Inyandiko z'Abahanga zifashishijwe
Michel Franchimont et alii, Manuel de procédure pénale, Bruxelles, Larcier, 2012, p.1173 et 1177

Urubanza

I. IMITERERE Y'URUBANZA

[1] Ubushinjacyaha bwareze Mukeshimana Vincent mu Rukiko Rwisumbuye rwa Gicumbi buvuga ko ku wa 21/02/2018, yatonganye n'umugore we witwa Mukankundiye Gratia amusohora mu nzu, asigarana umwana wazanywe na nyina witwa Muka.C.[1] w'imyaka icyenda (9) y'amavuko maze aramusambanya. Mukeshimana Vincent yemeye icyaha ntiyagira ikindi yongeraho.

[2] Mu rubanza RP 00111/2018/TGI/GIC rwaciwe ku wa 11/05/2018, Urukiko rwasanze Mukeshimana Vincent yemera ko yasambanyije umwana w'imyaka icyenda y'amavuko, imvugo z'umwana nazo zemeza ko nyina amaze kugenda Mukeshimana Vincent yamuhaye igiceri cya 100 Frw arara amusambanya, ko nubwo raporo ya muganga ivuga ko nta kigaragaza ko umwana yasambanyijwe (*pas de trace de traumatismesobjectivables, pas de maladies sexuellement transmissible, hymen intact*), icyaha kimuhama, kandi kuba yarasambanyije umwana w'imyaka icyenda akwiye guhanishwa igihano kiremereye aricyo igifungo cya burundu y'umwihariko.

[3] Mukeshimana Vincent yajuririye Urukiko Rukuru, avuga ko yaburanye yemera icyaha ariko ahanishwa igihano kiremereye, ageze mu iburanisha avuga ko nta cyaha yakoze, ko yemejwe icyaha n'inkoni yakubitwaga.

[4] Mu rubanza RPA 00574/2018/HC/KIG rwaciwe ku wa 29/11/2018, Urukiko rwasanze Mukeshimana Vincent yaravugiye mu Bushinjacyaha ko yashyize igitsina cye ku cy'umwana kikanga kwinjira, arekeraho, bityo ko nubwo muganga yasanze umwana atarasamabanyijwe

[1]Reba imyirondoro yose muri dosiye

bitatesha agaciro ibyo nyir'ubwite yiyemerera kandi ashinjwa n'umwana wahohotewe, rwanzura ko ubujurire bwe nta shingiro bufite, bityo ko nta gihindutse ku mikirize y'urubanza rwajuririwe.

[5] Mukeshimana Vincent yajuriye mu Rukiko rw'Ubujurire avuga ko ibisobanuro yatanze mu Rukiko byirengagijwe bituma arengana, asaba kugirwa umwere.

[6] Iburanisha mu ruhame ryabaye ku wa 24/02/2020, Mukeshimana Vincent yunganiwe na Me Nkuriyingoma Jean Damascène naho Ubushinjacyaha buhagarariwe na Niyonkuru Françoise, Umushinjacyaha ku rwego rw'Igihugu.

II. IKIBAZO KIGIZE URUBANZA N'ISESENGURWA RYACYO

Kumenya niba hari ibimenyetso bihamya Mukeshimana Vincent icyaha akurikiranweho

[7] Mukeshimana Vincent avuga ko yari asanzwe agirana intonganya n'umugore we bapfa ubusinzi, kumusuzugura no kumusahura, ku wa 21/02/2018 ataha kare asiga umugore mu kabari, amaze gucyura amatungo abwira umwana w'umugore we n'umwana we witwa Izabayo kuryama, bukeye azindukira mu Buganza. Asobanura ko iryo joro umugore we ataraye mu rugo, ahubwo mu gitondo aza gufata umwana we witwa Muka. C., yabyaranye n'undi mugabo, amujyayana mu Buyobozi, amurega ko yamusambanyije. Avuga ko avuye mu Buganza, yahamagajwe ku Murenge, aregwa ko yasambanyije uwo mwana, abashinzwe umutekano baramukubita, bamusaba gupfa kwemera ko yamusambanyije akoresheje intoki, abonye inkoni zimurembeje avuga ko yagerageje kwinjiza igitsina cye mu cy'umwana bikanga. Asobanura ko yageze mu Rukiko Rukuru asobanura ko yahaniwe icyaha atakoze, Urukiko ntirwabiha agaciro.

[8] Me Nkuriyingoma Jean Damascène, umwunganira, avuga ko hari ugushidikanya mu bimenyetso by'Ubushinjacyaha kuko umugore watanze ikirego atari yaraye mu rugo, umwana wararanye n'uvugwa ko yahohotewe nawe ntiyabazwa ngo agaragaze ko Muka. C yaba yararanye na Se bugacya nk'uko abivuga, ko abatangabuhamya bari muri dosiye ntaho bahuriye n'imikorere y'icyaha, akaba asanga kuba uregwa yaremeye icyaha bitihagije kugirango kimuhame.

[9] Uhagarariye Ubushinjacyaha avuga ko Mukeshimana Vincent yemeye icyaha mu nzego zose z'ubutabera asobanura n'uburyo yagikoze, ko iby'uko yaba yarakubiswe yasobanuye ko byabereye ku Murenge, akaba atagaragaza icyatumye akomeza kwemera icyaha mu Bugenzacyaha no mu Bushinjacyaha ndetse n'imbere y'inkiko Avuga ko icyatumye Izabayo atamenya ko umwana bararanaga yasambanyijwe ari uko Mukeshimana Vincent ashobora kuba yaramutwaye akamugarura butaracya, ko icyatumye Ubugenzacyaha buvuga ko Mukeshimana Vincent yinjije igitsina cye mu cy'umwana naho raporo ya muganga ikaza igaragaza ko umwana atigeze asambanywa ari uko Umugenzacyaha yari yashingiye ku makuru yari yahawe, ariko ko kuba uregwa atarinjije igitsina cye mu cy'umwana bitavanaho ko yamusambanyije.Asoza avuga ko kuba noneho Mukeshimana Vincent ahinduye imvugo, agahakana icyaha ataribyo byari bikwiye gushingirwaho agirwa umwere, kuko byaba binyuranyije n'umurongo watanzwe n'urukiko rw'Ikirenga.

UKO URUKIKO RUBIBONA

[10] Ingingo ya 107, igika cya mbere, y'Itegeko no 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshijabyaha iteganya ko Ubushinjacyaha, uwakorewe icyaha cyangwa abamufiteho uburenganzira iyo baregeye indishyi z'akababaro cyangwa biregeye umuburanyi, nibo bagomba gutanga ibimenyetso byemeza icyaha. Naho ingingo ya 111 y'iryo tegeko ivuga ko Gushidikanya birengera ushinjwa. Iyo urubanza rwakurikiranywe mu buryo bwose, ntihagire

ibimenyetso nyakuri biboneka byemeza nta shiti abacamanza ko ushinjwa yakoze icyaha koko, bagomba kwemeza ko atsinze.

[11] Dosiye y'urubanza irimo inyandiko y'Ubushinjacyaha itanga ikirego ivuga ko ku wa 21/02/2018, Mukeshimana Vincent yakubise umugore we bituma uyu yahukana, noneho muri iryo joro arara asambanya umwana uwo mugore yashakanye, buracya. Iyo nyandiko ivuga ko ibimenyetso bihamya uregwa icyaha akurikiranweho ari ukuba acyiyemerera, bikongera bigashimangirwa n'abatangabuhamya barimo Uwababyeyi Monique na Nizeyimana Samuel, ko harimo kandi raporo ya muganga igaragaza ko uwo mwana yasambanyijwe koko, n'icyemezo cy'amavuko cyerekana ko uwo mwana yavutse mu mwaka wa 2008, bivuze ko yari afite imyaka icyenda (9) icyaha gikorwa.

[12] Dosiye y'urubanza igaragaza ko mu Bugenzacyaha, Mukeshimana Vincent yavuze ko yemera icyaha akurikiranweho, abajijwe gusobanura uko byagenze agira ati: "navuye ku kabari nasizne, ngeze mu rugo ntongana n'umugore nuko mubwira ko mukubita, aragenda, ntiyarara mu rugo nuko mbonye amaze kugenda mfata wa mwana ndamurongora turararana buracya", abajijwe inshuro ya murongoye agira ati "ni inshuro imwe." Mu Bushinjacyaha naho yemeye icyaha, abajijwe gusobanura imikorere yacyo aguva ko "uwo mukobwa yaje mu rugo yaje gusura nyina turaryamana, ndamusambanya…narahashyize ariko nasanze byanze ndabireka, nahashyize igitsina cyane ku gitsina cy'uwo mwana hanyuma mbona byanze ntabwo iri kujyamo ndabireka."

[13] Dosiye irimo na none imvugo ya Mukankundiye Gratia, nyina w'umwana uvugwa ko yahohotewe igira iti : Mukeshimana Vincent yaraje atashe, ageze mu rugo arankubita, nijoro nuko ndirukanka nibwo umwana wanjye uvugwa ko yahohotewe namusize mu rugo aryamye, bukeye ndagaruka nsanga umwana wanjye afite igiceri cy'ijana (100 Frw), mubajije aho yagikuye, ambwira ko ari Mukeshimana wayamuhaye kugirango amurongore…"

[14] Dosiye y'urubanza irimo na none imvugo za Uwababyeyi Monique wavugiye mu Bugenzacyaha ko iby'uko uwo mwana yasambanyijwe Twabibwiwe na nyina w'umwana witwa Mukankundiye Gratia..." ko uregwa yahaye umwana igiceri cya 100 Frw kugirango amusambanye kandi ko yamuraranye, naho Nizeyimana Samuel avuga ko Mukankundiye Gratia yaje kundeba …ambwira ikibazo cy'umwana we wasambanyijwe n'umugabo we, … [ko umwana] yari afite igiceri cya 100 F, amubajije aho yagikuye, umwana abwira nyina ko Mukeshimana Vincent ari we wayamuhaye kugirango amusambanye. Icyo gihe byababaye Mukeshimana Vincent yaraye arwanye n'umugore we bita Mukankundiye Gratia nuko arahukana nuko Mukeshimana Vincent asigarana uwo mwana arara amusambanya ijoro ryose, yongeraho ko basanganywe amakimbirane.

[15] Urukiko rurasanga muri dosiye nta nyandiko y'umwana uvugwa ko yasambanyijwe irimo, nta nubwo Izabayo wararanaga n'umwana uvugwa ko yasambanyijwe yigeze abazwa, amakuru y'uko Muka.C yasambanyijwe yatanzwe bwa mbere na Mukankundiye Gratia, ayabwira Uwababyeyi Monique na Nizeyimana Samuel ku buryo mu Bugenzacyaha aba bombi basubiyemo ibyo yababwiye by'uko Mukeshimana Vincent yaraye arongora uwo mwana burinda bucya amaze kumushukisha igiceri cya 100 Frw, mu yandi magambo Mukankundiye Gratia ni we mutangabuhamya wenyine ushinja Mukeshimana Vincent, nyamara nawe ubwe yiyemerera ko bari basanzwe bafitanye amakimbirane ndetse ko mbere y'uko atanga ikirego, uwo mugabo yari yamukubise bituma yahukana.

[16] Urukiko rurasanga iby'uko Mukeshimana Vincent na Mukankundiye Gratia basanganywe amakimbirane byemezwa kandi na Nizeyimana Samuel uvuga ko ijoro ribanziriza umunsi Mukankundiye Gratia atangaho ikirego, bari barwanye, ariko ko n'ubundi basanzwe batumvikana, kuba bari baraye barwanye kugeza ubwo umugore yahukana, hanyuma mu gitondo umugore akazinduka atanga ikirego cy'uko umugabo we, batararanye, yasambanyije umwana uwo mugore

yashakanye bisaba ko mu rwego rwo kurengera uburenganzira bw'uvugwa ko yahohotewe ndetse n'ubw'uregwa gukora icyaha, ibimenyetso biri muri dosiye bisuzumanwa ubushishozi n'ubwitonzi kugirango hatagira ubirengeniramo.

[17] Urukiko rurasanga inyandiko y'Ubugenzacyaha yitwa Kwiyambaza Impuguke" yakozwe ku wa 24/02/2018 igira iti victime avuga ko ku wa 21/02/2018 saa 03h00 z'ijoro aribwo yasambanyijwe ku gahato n'uwitwa Mukeshimana", muri raporo ya muganga Mukankundiye Gratia yavugaga ko Mukeshimana Vincent yasambanyije Muka.C kugeza ubwo yinjije igitsina cye mu cy'umwana (*sa maman nous raconte que l'enfant a subi une violence sexuelle avec penetration à la date du 21/02/2018 vers 04h00 dans une chambre*), imvugo ya Mukankundiye Gratia ikaba yari igamije kwerekana ko umwana yasambanyijwe, Mukeshimana Vincent akinjiza igitsina cye mu cy'umwana, nyamara raporo ya muganga yo ku wa 27/02/2018, ivuga ko uwo mwana ntawigeze amukoraho, ko nta ndwara zandurira mu myanya y'imyororokere afite ndetse ko n'akarangabusugi ari kazima (*pas de trace de traumatismeobjectivable, pas des maladies sexuellement transmissible objectivable, hymen intact*).

[18] Urukiko rurasanga Mukeshimana Vincent yarahamijwe icyaha hashingiwe ahanini ku kuba yaraburanye yemera icyaha, mu gika cya munani cy'urubanza rwaciwe ku rwego rwa mbere, Urukiko Rwisumbuye rwa Gicumbi rwagize ruti: Mukeshimana Vincent yaburanye yiburanira maze yemera icyaha, ntiyagira ibindi bisobanuro atanga", inyandiko- mvugo y'iburanisha ryabaye ku wa 03/05/2018, ikaba igaragaza ko Mukeshimana Vincent yagize ati: Ndacyemera [icyaha], asabwe gusobanura uburyo yagikoze agira ati: "ndabyemera ko twararanye", naho ku gifungo cya burundu y'umwihariko yasabiwe agira ati: "ndasaba imbabazi", mu gika cya cyenda (9) cy'urubanza rujuririrwa, Urukiko Rukuru ruvuga ko "nk'uko umucamanza wa mbere yabibonye…amagambo yo kwemera atsindisha uwayavuze…' mu gika cya 10 ruvuga ko "nubwo icyemezo cya muganga kivuga ko nta cyerekana ko [umwana] yasambanyijwe mu buryo bugaragara hashingiwe kuri ubwo buryo icyaha Mukeshimana Vincent yiyemerera yagikoze, icyaha cyo gusambanya umwana kiramuhama.

[19] Urukiko rurasanga nubwo mu rubanza rujuririrwa Urukiko Rukuru rwavuze ko Mukeshimana Vincent yaburanye yemera icyaha, imbere yarwo yavuze ko yajuriye agamije gusaba ko yahanishwa igifungo cy'imyaka icumi (10), ariko asobanura ko "nta cyaha yakoze ko uwo mugore bari bafitanye amakimbirane" abajijwe niba ibyo bishatse kuvuga ko nta cyaha yakoze asubiza ko icyaha atacyemera, ko yacyemeye kuko yakubitwaga ko imyanzuro ijurira bayimukoreye, ko atariwe wayikoze", aho gucukumbura iyi miburanire, Urukiko rufata ko yemeye icyaha ku rwego rwa mbere, bituma rwemeza ko icyaha kimuhama.

[20] Urukiko rurasanga kuba Mukeshimana Vincent yaremeye icyaha mu nzego z'iperereza ndetse n'imbere y'Urukiko Rwisumbuye rwa Gicumbi ubwabyo ntibyihagije ngo hemezwe ko ahamwa n'icyaha, Ubushinjacyaha bufite inshingano zo gushaka ibimenyetso ntibugaragaza icyatumye umwana wahohotewe ndetse n'uwo bararanaga witwa Izabayo batabazwa, ngo imvugo zabo zunganire iza Mukankundiye Gratia cyangwa iz'uregwa, bityo nk'uko Urukiko rw'Ikirenga rwabisobanuye mu rubanza Dusabimana Jeannette yaburanaga n'Ubushinjacyaha, kwemera icyaha ntabwo buri gihe byafatwa nk'ikimenyetso ndakuka cyihagije cyashingirwaho mu kwemeza ko uregwa ahamwa n'icyaha akurikiranweho kuko iyo kigereranyijwe n'ibindi bimenyetso, kwemera icyaha nicyo kimenyetso gifite intege nke (*preuve fragile*) kurusha ibindi, hakaba hari igihe kiba kidakwiye kwemerwa ngo gihabwe agaciro kuko kiba kidafatika cyane cyane nk'iyo uregwa, utunganiwe, yaburanye ahakana icyaha, hanyuma akaza kucyemera mu buryo budasobanutse cyangwa agatangira acyemera hanyuma akaza kugihakana, ko icyo gihe Ubushinjacyaha aribwo bufite inshingano zo kugaragaza ibindi bimenyetso bushingiraho. 2

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[2] Reba urubanza RPAA 0066/15/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 04/01/2019, kuva ku gika cya 30 kugeza ku cya 33.

[21] Urukiko rurasanga nubwo nta kibuza ko Urukiko rushingira ku ukwemera icyaha kwakozwe mbere mu gihe uregwa yasubiye ku mvugo ye,3 umurongo watanzwe n'Urukiko rw'Ikirenga mu rubanza rwibukijwe haruguru n'uko guhitamo imvugo yemera icyaha hakirengagizwa igihakana bikwiye kujyana n'ibindi bimenyetso cyane cyane iyo uregwa ari umuturage utajijutse, utazi gusoma no kwandika ushobora kwemera ibyo abandi bamubwiye atabanje gushishoza ngo amenye ingaruka zabyo, kubireba uru rubanza, bikaba bigaragara ko mu iburanisha ryabereye mu Rukiko Rukuru ku wa 14/11/2018, Mukeshimana Vincent yasobanuye ko imyanzuro ijurira atari we wayiyandikiye kuko atazi kwandika no gusoma, icyo gihe kandi ndetse na mbere yaho akaba yaraburanaga atunganiwe,4 gushingira rero ku mvugo y'uregwa yemera icyaha gusa, idafite ikindi kimenyetso kiyishimangira *(corroborative evidence*) cyangwa kiyihuza n'icyaha aregwa (*confirmation in a material respect*), ku kirego cyo gusambanya umwana cyatanzwe n'umugore we baraye barwanye, byaba ari uguhindura ukwemera icyaha ikimenyetso kiruta ibindi (*probatio probatissima*) nk'uko byari bimeze mu nkiko z'Iburayi mbere y'ikinyejana cya 19, aho ukwemera icyaha aricyo kimenyetso cyonyine cyashakishwaga n'inzego zose z'ubutabera, kugeza ubwo gifatwa nk'umwamikazi w'ibimenyetso (*regina probatia*),5 ariyo mpamvu iyo ikimenyetso cyatanzwe n'Ubushinjacyaha ari ukwemera icyaha kw'uregwa kudashimangiwe n'ibindi bimenyetso bikwiye kwitonderwa.

[22] Urukiko rurasanga ibyemejwe n'Urukiko rw'Ikirenga bihura n'umurongo watanzwe mu manza zitandukanye zaciwe n'Urukiko rw'Ikirenga rwa Afurika y'Epfo aho rwasanze ukwemera icyaha kwonyine kutihagije kuko nubwo hari amahirwe make ko abantu b'abere bashobora, ku bushake bwabo kandi nta gahato, kwemera icyaha, hari abemera icyaha badafite aho bahuriye nacyo cyangwa batazi uwagikoze. Mu rubanza rwa Bengu, urwo Rukiko rwasanze uregwa yaremeye icyaha atakoze kugirango akatirwe igihano cyazatuma ahabwa imbabazi kuko yabonaga ntayindi nzira yo kugaragaza ko atakoze icyaha,6 akaba ari nako byagenze ubwo Mukeshimana Vincent yajuriraga mu Rukiko Rukuru, naho mu rubanza rwa Njoli na bagenzi be, Urukiko rw'Ikirenga rwa Afurika y'Epfo rusanga hari abemeye ibyaha bibeshye, abandi bagamije ahubwo guhishira abakoze ibyaha ndetse hari na bamwe mu bemeye ibyaha bari bafite ikibazo cy'uburwayi bwo mu mutwe.[7]

[23] Urukiko rurasanga ibimaze kuvugwa mu gika kibanziriza iki bishimangira ko iyo nta kimenyetso kigaragaza icyaha cyakozwe (confirmation in a material respect), nkaho mu rubanza rwa Blyth, Urukiko rwasanze ukwemera kw'umugore wavugaga ko yishe umugabo akoresheje uburozi bwa arsenic bishimangirwa n'uko ubwo burozi bwasanzwe mu mubiri wa nyakwigendera,8 cyangwa ngo haboneke ibindi bimyenyetso byunganira ukwemera icyaha kw'uregwa (*corroborative evidence*) cyane cyane iyo uwari wacyemeye yisubiyeho, Urukiko rugomba kwemeza ko intege nke z'ikimenyetso (*fragilité de la preuve*) cyatanzwe n'Ubushinjacyaha zituma habaho ugushidikanya ku mikorere y'icyaha uregwa akurikiranweho, bikarengera uregwa. Ibi birongrea bigahura kandi n'umurongo Urukiko rw'Ikirenga rwari rwaratanze mu manza Nyirabahimana Espérance yaburanaga n'Ubushinjacyaha9 n'urwo Ndungutse Deo yaburanaga n'Ubushijacyaha,10 aho

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[3] 3 Reba Michel Franchimont et alii, Manuel de procédure pénale, Bruxelles, Larcier, 2012, p.1177

[4]Mukeshimana Vincent yavugiye imbere y'Urukiko Rukuru mu iburanisha ryabaye ku wa 14/11/2018 ko imyanzuro yo kujurira yayikorewe n'abandi.

[5] Reba Michel Franchimont et alii, Manuel de procédure pénale, Bruxelles, Larcier, 2012, p.1173

[6] "Where the evidence is strongly stacked against the accused he may even confess in the hope of obtaining some executive mercy" Reba State v Bengu 1965 (1) SA 28 (N).

[7] A false confession may be made by mistake, in order to shield another or because the confessor is of unbalanced mind" Reba State v Njoli and Another 1981 (3) SA 1233 (a) at 1237 G

[8] "The accused's confession that she murdered her husband by arsenical poisoning was held to be confirmed by the presence of arsenic in the body." Reba *Regina v Blyth* 1940 AD 355 at 364

[9] Reba urubanza nº RPA 0229/10/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 19/09/2014

[10]Reba urubanza nº RPA 0042/14/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 02/06/2017

rwavuze ko kwemera icyaha kudashobora kuba ikimenyetso cyonyine cyihagije gishobora gutuma uregwa ahamwa n'icyaha mu gihe nta kindi kimenyetso gifatika kicyunganira.

[24] Hashingiwe ku bimaze gusobanurwa haruguru no ku biteganywa n'ingingo ya 111 y'Itegeko No 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshijabyaha iteganya ko "Gushidikanya birengera ushinjwa. Mukeshimana Vincent akaba agomba kugirwa umwere.

III. ICYEMEZO CY'URUKIKO

[25] Rwemeje ko ubujurire bwa Mukeshimana Vincent bufite ishingiro;

[26] Ruvuze ko urubanza RPA 00574/2018/HC/KIG rwaciwe n'Urukiko Rukuru ku wa 29/11/2018 ruhindutse mu ngingo zarwo zose;

[27] Rwemeje ko Mukeshimana Vincent ari umwere;

[28] Rutegetse ko Mukeshimana Vincent ahita arekurwa urubanza rukimara gusomwa;

[29] Ruvuve ko amagarama y'urubanza aherera ku Isanduku ya Leta.